

Fact Sheet: Final Revisions to the Identification of Non-Hazardous Secondary Materials That Are Solid Wastes Final Rule

On December 20, 2012, the U.S. Environmental Protection Agency (EPA) finalized a specific set of adjustments to Clean Air Act standards for boilers and certain solid waste incinerators, originally finalized in March 2011.

- o These adjustments maintain extensive public health protections achieved by the March 2011 standards by reducing toxic air pollution, including mercury and particle pollution.
- o At the same time, these adjustments increase the rules' flexibility and address concerns raised by stakeholders.
- o The specific set of adjustments address new data provided to the agency and additional information about real-world performance and conditions under which affected boilers and incinerators operate.
- o These adjustments maintain the dramatic cuts in the cost of implementation that were achieved in the final standards issued in March 2011.

ACTION

In addition, EPA has re-examined the 2011 Identification of Non-Hazardous Secondary Material (NHSM) final rule in 40 CFR part 241 and is amending/clarifying certain issues on which EPA has received new information, as well as specific targeted revisions to allow implementation of the rule as the EPA originally intended. The regulations being issued today include:

- Revised Definitions. EPA is finalizing revisions to the three definitions discussed in the proposed rule: (1) "clean cellulosic biomass," (2) "contaminants," and (3) "established tire collection programs." In addition, based on comments received on the proposed rule, the Agency is also finalizing a revised definition of "resinated wood."
 - (1) *Clean Cellulosic Biomass:* EPA is issuing a revised definition of "clean cellulosic biomass" that: (1) makes clear that the list of biomass materials are examples within the definition and is not intended to be an exhaustive list; and (2) provides a more comprehensive list of clean cellulosic biomass to guide the regulated community. Specifically, the following additional materials are included within the definition of biomass—agricultural derived biomass, other crop residues (including vines, orchard trees, hulls, and seeds), and other biomass crops used for the production of cellulosic biofuels, hogged fuel, untreated wood pallets, wood pellets, and wood debris from urban areas.
 - (2) *Contaminants:* EPA is issuing a revised definition of "contaminants" to clarify what constituents will be considered contaminants for the purposes of the contaminant legitimacy criterion. Revisions include: (1) the replacement of a reference to "any constituent that will result in emissions" with a specific list of constituents to be

considered as contaminants based on their status as a precursor to air emissions; (2) the removal from the definition of specific CAA section 112(b) and 129(a)(4) pollutants that are not expected to be found in any NHSM or are adequately covered elsewhere in the definition; and (3) the removal of the phrase “including those constituents that could generate products of incomplete combustion” from the definition.

(3) *Established Tire Collection Programs*: EPA is issuing a revised definition of “established tire collection program” in order to account for “off-specification” (including factory scrap) tires that are contractually arranged to be collected, managed, and transported between a tire manufacturer (including retailers or other parties involved in the distribution and sale of new tires) and a combustor, which is analogous to how scrap tires removed from vehicles are managed. In addition to the proposed changes, we are revising the definition to specifically include tires that were not abandoned and were received from the general public at tire collection program events.

(4) *Resinated Wood*: EPA is issuing a revised definition of “resinated wood” that includes additional materials in order to be more representative of the universe of resinated wood residuals that are currently used as fuels throughout the wood product manufacturing process.

- Contaminant Legitimacy Criterion for NHSM Used as Fuels. EPA is issuing a revised contaminant legitimacy criterion for NHSMs used as fuels to provide additional details on how contaminant comparisons between NHSMs and traditional fuels may be made. Revisions include: (1) the ability to compare groups of contaminants where technically reasonable; (2) the clarification that “designed to burn” means can burn or does burn, and not necessarily permitted to burn; (3) the ability to use traditional fuel data from national surveys and other sources beyond a facility’s current fuel supplier; and (4) the ability to use ranges of traditional fuel contaminant levels when making contaminant comparisons, provided the variability of NHSM contaminant levels is also considered.
- Categorical Non-Waste Determinations for Specific NHSM Used as Fuels. EPA is codifying determinations that certain NHSMs are non-wastes when used as fuels. Based on all available information, the EPA has determined that the following NHSMs are categorically not a solid waste when burned as a fuel in combustion units:
 - (1) scrap tires that are not discarded and are managed under the oversight of established tire collection programs, including tires removed from vehicles and off-specification tires
 - (2) resinated wood
 - (3) coal refuse that has been recovered from legacy piles and processed in the same manner as currently-generated coal refuse

- (4) dewatered pulp and paper sludges that are not discarded and are generated and burned on-site by pulp and paper mills that burn a significant portion of such materials where such dewatered residuals are managed in a manner that preserves the meaningful heating value of the materials.
- Rulemaking Petition Process for Other Categorical Non-Waste Determinations. EPA is finalizing a rulemaking petition process that provides persons with an opportunity to submit a rulemaking petition to the Administrator, seeking a categorical determination for additional NHSMs to be listed in §241.4(a) as non-waste fuels if they can demonstrate that the NHSM meets the legitimacy criteria, or after balancing the legitimacy criteria with other relevant factors, and EPA determines that the NHSM is not a solid waste when used as a fuel.
 - Streamlining of the Section 241.3(c) Non-Waste Determination Petition Process. EPA is streamlining the non-waste determination provisions under §241.3(c). The public participation process was streamlined to accommodate petitions that apply to multiple combustors, for example petitions that address combustors that cross multiple regions. In addition, if a determination is made that the NHSM is a non-waste, the decision will be retroactive and apply on the date the petition was submitted.
 - Other Materials For Which Additional Comment Was Not Requested. In preamble text, EPA stated that it received information regarding other NHSMs that are good candidates for a categorical listing in a future rulemaking. These include: (1) paper recycling residuals (including old corrugated cardboard (OCC) rejects); and (2) construction and demolition (C&D) wood processed pursuant to best practices and produced and managed under the oversight of a comprehensive collection system or contractual arrangement. In addition, EPA noted that it had received information related to creosote-treated railroad ties and indicated areas where new information from the regulated community is needed and if such additional information provides support for a categorical listing, that EPA would also address this NHSM in a future rulemaking.

Background

- EPA issued the Identification of Non-Hazardous Secondary Materials (NHSM) final rule in March 2011. The rule was developed under the Resource Conservation and Recovery Act (RCRA) in conjunction with three rules under the Clean Air Act (CAA) – the major boiler, area boiler and CISWI rules. Together, these rules were designed to provide substantial reductions in the release of hazardous air pollutants into the atmosphere from boilers and incinerators.

- Using a wide variety of fuels, including coal, oil, natural gas and biomass, boilers power heavy machinery, provide heat for industrial and manufacturing processes and provide power and heat for a number of other uses. EPA's boiler final rules recognize the diverse and complex range of uses and fuels, and tailor standards to reflect the real world operating conditions of specific types of boilers. The CISWI final rule recognizes the important relationship to the Non-Hazardous Secondary Materials (NHSM) rule.
- The NHSM rule identifies which non-hazardous secondary materials are, or are not, solid wastes when burned in combustion units, such that:
 - Non-hazardous secondary materials considered solid wastes under RCRA would be subject to the section 129 CAA requirements.
 - Non-hazardous secondary materials not considered solid wastes under RCRA would be subject to the section 112 CAA requirements.